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# NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

APRIL 10, 2008.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

## R E P O R T

[To accompany H.R. 3079]

The Committee on Energy and Natural Resources, to which was referred the bill (H.R. 3079) to amend the joint resolution that approved the covenant establishing the Commonwealth of the Northern Mariana Islands, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE MEASURE

The purpose of H.R. 3079 is to extend U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI) as provided by Section 503 of the Covenant, but with special provisions to ease the transition to Federal law and respond to the CNMI's special circumstances. These special provisions include: establishing an extendable five-year transition period and guest worker program; waiving the numerical limitation on nonimmigrant worker visas under the Immigration and Naturalization Act (INA) for workers entering the CNMI; granting nonimmigrant status to certain alien investors so that they may remain in the CNMI; establishing a visa waiver program to facilitate travel to the CNMI by tourists and other visitors; requiring a report on the future status of certain long-term CNMI guest workers; and authorizing technical assistance to identify opportunities to diversify and grow the CNMI economy, and to recruit, train, and hire U.S. citizens and other legal permanent resident workers.

## BACKGROUND AND NEED

The Northern Mariana Islands lie north of Guam and between the Philippines and Japan. The U.S. captured the islands in WWII and they became a district of the U.S.-administered, United Nations Trust Territory of the Pacific Islands. In 1976, Congress approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (P.L. 94–241). The Covenant had been approved in a U.N. observed plebiscite in the Northern Mariana Islands that established the basis for termination of the U.N. Trusteeship in 1986. Section 503 of the Covenant provides in part that:

> "The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement: (a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States; . . ."

The Section-by-Section analysis of the Committee Report on the Covenant provides in part:

> "The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of those problems. It may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Mariana Islands" (Sen. Rpt. 94–433).

The Committee anticipated that by the time of the Trusteeship termination, the Federal Government would have addressed these problems and U.S. immigration laws could then be extended. The primary need for alien workers was likely to be in construction, temporary jobs that could be accommodated under U.S. immigration laws. At the time the Covenant was negotiated, prospects for economic development focused on tourism and anticipated Department of Defense activity.

Upon Trusteeship termination, the CNMI became a U.S. territory and its residents became U.S. citizens. Although the population of the CNMI was only 16,000 when the Covenant was approved in 1976, the population was estimated at 80,000 in 2005. The rapid increase in population coincides with local control of immigration. Shortly after the Covenant went into effect, the CNMI began to experience growth in both the tourist and construction industries. Interest also began to grow in garment production. The CNMI, like the other territories except Puerto Rico, is outside the U.S. customs territory and can export products manufactured in the territory quota-free and duty-free to the U.S., provided the products meet certain value-added requirements under General Note 3(a) of the Tariff Schedules. The first garment manufacturing company began operation in the CNMI in October, 1983.

U.S. officials believed that the period of local immigration control would last only a few years, instead it has continued for over thirty years. Instead of using local immigration control to reduce the impact of immigrants on the community, the CNMI promoted the use of alien workers throughout the private sector. In 1986, the Reagan Administration wrote to the Governor of the CNMI that, "the tremendous growth in alien labor [is] . . . extremely disturbing," and warned, "the uncontrolled influx of alien workers . . . can only result in increased social and cultural problems." The letter concluded, "Without timely and effective action to reverse the current situation, I must consider proposing Congressional enactment of U.S. Immigration and Naturalization Service requirements for the NMI."

Nevertheless, the CNMI continued to promote the extensive use of imported labor which has caused several trends of continuing and growing concern to U.S. officials.

First among these concerns has been the development of an unsustainable, two-tiered economy that is not creating private sector opportunities for local residents. By 2000, the private sector workforce in the CNMI was over 85 percent alien workers, the public sector workforce was nearly 85 percent U.S. citizens, and the unemployment rate among U.S. citizens was 11 percent. In 1997, the U.S. Commission on Immigration Reform reported, "The Marianas immigration system is antithetical to the principles that are at the core of the U.S. immigration system." In 2001, the Committee reported, "What job creation exists in the private sector goes to foreign workers. The ability to obtain skilled foreign workers at low wages effectively forecloses opportunities for U.S. residents in both entry and skilled positions." (Sen. Rpt. 107–28). The Committee's February 8, 2007 oversight hearing on conditions in the CNMI received testimony that increasing numbers of U.S. citizen families are emigrating to the U.S. seeking better opportunities.

Second, has been the growing concern about ineffective immigration/border control and its consequences. In 1997, reports by the U.S. Immigration and Naturalization Service and by the bipartisan U.S. Commission on Immigration Reform found that the CNMI does not have, and never will have, the capacity to properly control its borders because border control requires sovereign authority to operate overseas consulates, issue visas, and have access to classified national and international watch lists. The U.S. Immigration and Naturalization Service reported, "[There are] serious deficiencies in all facets of the Marianas' current system of immigration enforcement and control . . ." and, "There appears to be universal recognition amongst the Mariana Government Authorities that various organized crime groups, such as the Japanese Yakuza, the Chinese Triads, and the Russian Mafia have made inroads into the Marianas . . . Few of these persons are ever detected at the port-of-entry or apprehended while in the Marianas." The report recommended that Congress enact legislation to extend U.S. immigration laws. In 2001, the Committee found "the record demonstrates that even with good faith and an honest commitment, there are substantive and procedural problems that the local government simply cannot handle" (Sen. Rpt. 107–28).

Concerns regarding the increased security risks posed by ineffective border control have grown substantially following the attacks

of September 11, 2001, and in light of the U.S. military's on-going buildup in nearby Guam.

Third, there has been a persistent pattern of exploitation and mistreatment of aliens. Congress first responded to reports of worker abuse in 1994 by establishing the Joint Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement. Under this Initiative, the U.S. Department of the Interior investigated and reported on the pattern of abuses including cheating on wages, unsafe working conditions, recruitment scams, and even coerced prostitution and abortion. However, the CNMI withdrew from the joint reform effort in 1997. There has been progress in addressing these problems through the Federal Government's unilateral establishment of a Labor Ombudsman as a part of the Initiative in 1999. The Ombudsman investigates complaints and advocates on behalf of workers. In 2006, the Labor Ombudsman reported to Congress, "there are still a number of serious problems yet to be effectively addressed by local government officials: ensuring health and safety of alien workers, inadequate prevention efforts to curb abuses, delay in investigating and adjudicating worker complaints, . . . difficulty in rooting out corruption. . . . unwillingness to prosecute repeat offenders." Testimony at the Committee's 2007 oversight hearing confirmed that these patterns persist.

Fourth, the huge population growth resulting from local policies and practices has overwhelmed the infrastructure and contributed to significant socio-economic impacts. The population increased from 16,000 in 1976 to an estimated 80,000 in 2005. The Interior Department reported that this growth, which includes both U.S. citizens and foreign guest workers, has had "a profound negative effect on public services and infrastructure such as education, healthcare, public safety, water, sewer, and solid waste disposal" (DOI Initiative Report, 1997). The Committee noted in its 2001 report that because most births were occurring to alien mothers, "there is an increasing number of persons obtaining U.S. citizenship outside the boundaries of the U.S. immigration and naturalization law" (Sen. Rpt. 107–28). In 1996, for example, there were 1,409 births to alien mothers out of a total of 1,890 births. Some of these non-citizen mothers are married to CNMI residents, but most are not and all such children became U.S. citizens. This pattern, coupled with the emigration of U.S. citizens seeking better job opportunities, is changing the ethic composition of the community in contradiction of the original intent of granting local immigration control, which was to protect the indigenous Chamorro and Carolinian community by reducing the impact of immigrants.

Elements of the CNMI's immigration policy are also simply inconsistent with Federal policies. Among these is the Federal policy that persons admitted into the U.S. to fill permanent jobs do so as immigrants with the ability to become U.S. citizens and full participants in the political process. Also, the lack of Federal immigration jurisdiction in the CNMI has hindered enforcement of Federal requirements under international agreements such as the treatment of persons seeking asylum or protection from torture. At the February 8, 2007 hearing, the Committee heard of the Administration's serious concerns regarding the CNMI's performance in meeting these international obligations.

As a general policy, federal laws should apply in the territories as in the rest of the U.S., but with modifications that take into account the particular circumstances of each of the territories. That was the Committee expectation when it approved the Covenant which specifically granted the U.S. the right to extend its immigration laws. Immigration is an inherently sovereign function and U.S. immigration laws should be extended to the CNMI with a smooth transition, and with the special provisions needed to mitigate adverse effects and to encourage diversification and growth of the local economy.

The Committee has on three occasions reported legislation to extend U.S. immigration laws. For further description of the background and need for this legislation see the legislative reports on those prior bills: Senate Reports 105–210, 106–204, and 107–28.

## LEGISLATIVE HISTORY

H.R. 3079 is based on S. 1052, in the 106th Congress, legislation reported by the Committee, and later passed unanimously by the Senate on February 7, 2000. It was then referred to the Committee on Resources of the House of Representatives, but no further action was taken. On March 20, 2007, the Committee requested that the Administration modify the text of S. 507, from the 107th Congress, which was identical to Senate-passed S. 1052, to reflect the passage of time, and to incorporate the views presented by the Administration and the Resident Representative of the CNMI, Pedro A. Tenorio, in their testimony at the Committee's February 8, 2007 oversight hearing (S. Hrg. 110–50). That revised text was received by the Committee on May 11, 2007 and was introduced as S. 1634 on June 15, 2007. A legislative hearing was held on July 19, 2007 (S. Hrg. 110–164). Following that hearing, the Committee requested further Administration revision to reflect the Administration's testimony. That new draft was received by the Committee on September 11, 2007 and was also made available to the House Committee on Natural Resources. On December 11, 2007, the House of Representatives passed H.R. 3079 and it was referred to the Committee on December 12, 2007.

At the business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered H.R. 3079 favorably reported.

## COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 3079, as described herein.

## SECTION-BY-SECTION ANALYSIS

### TITLE I—NORTHERN MARIANA ISLANDS IMMIGRATION, SECURITY, AND LABOR ACT.

*Section 101* provides that Title I of S. 1634 as the "The Northern Mariana Islands Immigration, Security, and Labor Act."

*Section 102(a)* expresses Congressional intent to ensure effective border control and security by extending the INA with special pro-

visions for: phasing out contract workers; minimizing adverse economic effects; recognizing local self-government; assisting the development of the CNMI economy; providing opportunities for locals to work; providing for the continued use of alien workers as necessary; and protecting workers from abuse.

*Section 102(b)* states that, in recognition of the CNMI's unique circumstances, it be given flexibility to maintain and develop businesses and that the Government of the CNMI is fully involved in the implementation process.

*Section 103(a)* amends the Covenant Act (P.L. 94–241) by adding a new Section 6, with new subsections (a) through (h) which would extend the immigration laws of the U.S. to the CNMI along with several special provisions to meet the special needs of the CNMI. It is intended that the immigration laws of the U.S. will apply to the CNMI, except as otherwise provided in this Title. Some of these exceptions, such as the Commonwealth Only Transitional Worker Program are temporary and are intended to smooth the transition from CNMI immigration law to U.S. immigration law. Other exceptions, such as the Guam/CNMI visa waiver program, are intended to be permanent modifications in the applicability of U.S. immigration law in the islands. This means, in some cases there will be two similar programs operating in the CNMI. For example, this Act would permit nonimmigrant workers to enter the CNMI under the Commonwealth Only Transitional Workers Program established under section 103(a) of H.R. 3079, but the extension of U.S. immigration laws would also provide, indefinitely, for the entry of nonimmigrant workers into the CNMI under section 101(a)(15)(H) of the INA, the called "H-visa" program.

Subsection (a) requires regulations and interagency agreement to establish and implement the extendable, five-year transition period. It further states that non-immigrant workers in the CNMI and Guam will not count against the numerical limitations set forth in section 214(g) of the INA. The Committee notes that this waiver is necessary to help meet the anticipated labor demands of the planned U.S. military buildup in Guam and the CNMI, and the Committee intends that this waiver of the numerical limitations for Guam and the CNMI is extended along with any extension of the five-year transition period.

Subsection (a) further provides DHS with the authority to classify an alien as a nonimmigrant treaty trader if: the alien was admitted to the CNMI as an investor before the transition program effective date; has continuously maintained residence in the CNMI under investor status; is otherwise admissible; and maintains the investment that formed the basis for the status. Because this authority will end at the end of the transition period, the Committee intends that the President and Government Accountability Office (GAO) will make recommendations regarding the post-transition period status of these investors in the reports to Congress to be made pursuant to Section 103(h).

The subsection further provides for a CNMI-Only Transitional Worker Program which would be established, administered, and enforced by DHS. The Secretaries of Labor, Homeland Security, and State would be able to extend the transition period for additional five year periods. It is important to note that the transition period covers several policies and programs and is not limited to

the Commonwealth Only Transitional Workers Program. For example, the transitional program also covers the Guam/CNMI waiver on numerical limitations on the INA H-visa program.

The Senate companion measure to H.R. 3079, S. 1634, and all previous CNMI reform bills considered by the Committee provided for a ten year transition period. It is most unlikely that the CNMI will be able to meet its labor needs and forego the Transitional Workers Program in five years. It is expected that there will be at least one, and probably more than one, five-year extension.

It is intended that nonimmigrant workers will be able to enter the CNMI under the INA, and under the CNMI-Only Transitional Worker Program. While the CNMI-Only Transitional Worker Program is to be phased out at the end of the extendable five-year transition program, nonimmigrant workers will continue to be able to enter the CNMI pursuant to the INA.

The subsection states that any alien present in the CNMI, at the start of the transition program effective date may remain in the CNMI and is considered authorized for employment. The CNMI government is required to provide all immigration records. The Secretary of Homeland Security may execute any U.S. or CNMI final order or exclusion, deportation or removal before, on or after the transition effective date.

Subsection (a) further states that upon the transition effective date, the provisions of this section and the INA shall supersede all laws of the CNMI relating to the admission and removal of aliens, and states that no time that an alien is in the CNMI in violation of CNMI law shall be counted as grounds of inadmissibility under the INA.

The subsection would require the Administration, in consultation with the CNMI, to report to Congress, no later than the second year after enactment on the population of aliens, status of aliens under federal law, future requirements of the CNMI for an alien workforce, and recommendations on whether Congress should consider permitting such workers long-term status under the INA. The Committee encourages the DHS, and all other Federal agencies involved in implementing the transition program period, to keep the costs associated with the transition program period on employers and non-immigrant guest workers at the same level as is currently being assessed by the CNMI government under local law.

Subsection 103(b) would expand the existing Guam Visa Waver Program to include the CNMI. DHS, State, and DOI, acting jointly, may waive the requirement for a visa for aliens applying to enter Guam and the CNMI for business or pleasure for a period not to exceed 45 days if it is determined that an adequate arrival and departure system has been developed, and such a waiver does not represent a threat to the United States and its territories.

DHS shall, in consultation with State and DOI, promulgate all necessary regulations within 180 days of enactment and shall include a list of all participating nations, and any bonding requirements, if different than those otherwise provided. The regulations should include countries for which the CNMI has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment. In drafting such regulations, the Committee encourages DHS to consult with the CNMI tourism industry to determine which tourists

markets have contributed to the benefit of the CNMI economy and that such benefit can be measured in terms of hotel occupancy, length of stay, and expenditures.

Section 103(c) would allow the Governors of Guam and the CNMI to request DHS to create additional Guam or CNMI-only nonimmigrant visa categories if the ones provided for do not meet other circumstances.

Section 103(d) would amend section 212(d)(7) of the INA to provide that persons seeking entry into the U.S. from the CNMI shall be processed using the existing INA authority regarding entry from Guam, Puerto Rico, and the USVI, and that any such person denied admission to the U.S. shall be immediately removed.

Section 103(e) directs the Secretary of the Interior, in consultation with the CNMI and the Secretaries of Labor and Commerce, to provide technical assistance. Such technical assistance should assist in identifying opportunities for diversification and growth of the CNMI economy, and for recruiting, training, and hiring workers first from among U.S. citizens and national residents in the CNMI, and then from among work-authorized aliens including FAS citizens. They shall assist in identifying jobs needed and develop curricula for identified job skills that are needed. Assistance grants by DOI, except for federal salaries, shall require a non-federal match of 10 percent.

Section 103(f) authorizes the Attorney General and the Secretaries of DHS and Labor to establish and maintain offices within the CNMI to carry out their duties under this Act and under the immigration laws of the U.S., and shall, to the maximum extent practicable, recruit and hire personnel from among qualified U.S. citizen and national applicants residing in the CNMI.

Section 103(g) states that amendments made will take effect on the first full month one year after the enactment of this Act.

Section 103(h) requires reports to Congress from the President and the Government Accountability Office. It authorizes the CNMI government to submit reports to the President with its recommendations for future changes, and requires that the President forward the CNMI's reports to the Congress with Administration comments.

Section 103(i) would require that the CNMI government not permit an increase in the number of alien workers in the CNMI as of the date of enactment, and shall administer its non-refoulement protection program in accordance with its September 12, 2003 agreement with DOI.

Section 103(j) provides conforming amendments to the Immigration and Naturalization Act.

Section 103(k) provides an exemption for Guam, the CNMI, and the Virgin Islands for access to other nonimmigrant professionals.

*Section 104* rescinds $200,000 in fiscal year 2009, and $225,000 annually for fiscal years 2010 to 2018, from the U.S. payments to the CNMI as required under section 702 of P.L. 94–241, in order to offset the direct spending impact of Title II of this bill.

*Section 105* authorizes such sums as may be necessary to carry out this Act.

*Section 106* provides, generally, that this Act shall take effect on the date of enactment, but that amendments to the INA shall take

effect upon the transition program effective date, unless specifically provided otherwise.

TITLE II—NORTHERN MARIANA ISLANDS DELEGATE ACT

*Section 201* designates Title II of S. 1634 as the 'Northern Mariana Islands Delegate Act.'

*Section 202* states that Section 901 of Public Law 94–241 authorizes the Resident Representative position and that this person shall be a nonvoting Delegate to the U.S. House of Representatives.

*Section 203* provides for the manner in which the CNMI non-voting Delegate shall be elected, beginning with the federal general election of 2008. The CNMI government is authorized to provide for primary elections. In the case of a vacancy, the office of the Delegate shall remain vacant until a successor is elected and qualified.

*Section 204* delineates criteria for candidate eligibility, consistent with local CNMI law.

*Section 205* clarifies which powers within the election framework remain within CNMI control, continuing matters of local application.

*Section 206* states that all the current Rules of the House of Representatives pertaining to Members of Congress, including compensation, privileges, and immunities, shall apply to the nonvoting delegate created in the legislation.

*Section 207* clarifies that the powers enumerated in the Covenant remain.

*Section 208* defines 'Delegate' as the Resident Representative mentioned in section 202.

*Section 209* makes conforming amendments regarding appointments to military service academies by the delegate from the CNMI.

COST AND BUDGETARY CONSIDERATIONS

*H.R. 3079—Northern Mariana Islands Immigration, Security, and Labor Act*

Summary: H.R. 3079 would amend the current law that governs the relationship between the United States and the Commonwealth of the Northern Mariana Islands (CNMI), a territory of the United States, to reform the immigration laws of CNMI. In addition, the act would provide Congressional representation for CNMI by creating a nonvoting delegate in the House of Representatives beginning in January 2009. CBO estimates that implementing H.R. 3079 would result in additional discretionary outlays of $12 million over the 2008–2013 period, assuming appropriation of the necessary amounts.

Enacting H.R. 3079 also would increase direct spending for payment of the salary of the new nonvoting delegate and the costs of associated benefits. In addition, the legislation would reduce direct spending by cutting certain payments to CNMI. CBO estimates that those provisions would result in no significant net effect on direct spending in any fiscal year over the 2009–2018 period. H.R. 3079 could affect revenues, but CBO estimates that any net changes in revenues would be insignificant in each year.

H.R. 3079 contains intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), because it would pre-

empt the immigration laws of CNMI and require that government to comply with additional federal requirements. CBO estimates that the direct costs of those mandates would be small and would not exceed the threshold established in UMRA ($68 million in 2008, adjusted annually for inflation).

By modifying the laws that govern immigration in CNMI, H.R. 3079 would impose private-sector mandates, as defined in UMRA, on employers and temporary alien workers in CNMI. The cost to comply with those mandates would depend in part on regulations to be developed by the Secretary under the act. Therefore, CBO cannot determine whether the aggregate cost of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation).

Major Provisions: H.R. 3079 would require the Department of Homeland Security (DHS) to develop a program to phase in the Immigration and Nationality Act, as modified by H.R. 3079, for CNMI. The transition period would begin approximately one year from the date of enactment of the legislation and would end on December 31, 2013. The program would include procedures for issuing visas to certain alien workers and investors, family-sponsored immigrants, and employment-based immigrants.

The act would authorize the Department of State to issue nonimmigrant visas to admit temporary alien workers to CNMI. For temporary alien workers who would not otherwise be eligible for admission into CNMI, H.R. 3079 would require that DHS establish and administer a system for issuing a decreasing number of annual permits to employers allowing them to hire such individuals during the transition period.

H.R. 3079 also would provide Congressional representation for CNMI by creating a position for a nonvoting delegate in the House of Representatives beginning in January 2009. Under current law, the Commonwealth of the Northern Mariana Islands elects' a Resident Representative, who represents the CNMI government in the United States but has no official status in the Congress. As a nonvoting Member, the delegate would have some of the same powers of a full-fledged Member, including the ability to introduce bills, offer amendments, and vote in House committees, but would not be able to vote on the floor of the House. In addition, the delegate would receive the same compensation, allowances, and benefits as a Member.

Estimated cost to the Federal Government: The estimated budgetary impact of the act is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 750 (administration of justice), and 800 (general government).

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Estimated Authorization Level | 3 | 1 | 2 | 2 | 2 | 2 |
| Estimated Outlays | 2 | 2 | 2 | 2 | 2 | 2 |

Basis of estimate: CBO estimates that implementing H.R. 3079 would increase discretionary spending by $12 million over the

2008–2013 period, assuming appropriation of the necessary amounts. In addition, we estimate that enactment of H.R. 3079 would have no significant net effect on direct spending in any fiscal year over the 2009–2018 period.

*Spending subject to appropriation*

This estimate assumes that the act will be enacted in 2008 and that the necessary amounts will be appropriated for each year, including supplemental appropriations for 2008.

Support Costs for New Delegate. Based on the current administrative and expense allowances available for Members of the Congress and other typical office costs, CBO estimates that the addition of a new nonvoting delegate would cost about $1 million in fiscal year 2009 and about $9 million over the 2009–2013 period, subject to the availability of appropriated funds.

Department of Homeland Security. Implementing H.R. 3079 would require DHS to establish a system to carry out immigration adjudications, inspections, and related activities in CNMI. We expect that by 2010 the department would cover its costs by collecting fees from applicants for visas. Based on information from DHS, we estimate that the department would need an appropriation of about $3 million for start-up costs in 2008, including information technology systems, facilities, and other infrastructure, and for relocating and training personnel.

*Direct spending and receipts*

Enacting H.R. 3079 would increase direct spending for paying the salary of the new nonvoting delegate and the costs of associated benefits. CBO estimates that the increase in direct spending for Congressional salaries and benefits would be about $3 million over the 2009–2018 period. That estimate assumes that the current Congressional salary of $169,300 a year would be adjusted for inflation in future years. In addition, H.R. 3079 would amend the current law that governs the relationship between the United States and CNMI. Specifically, the legislation would rescind about $200,000 annually, with increases for inflation, from payments made by the United States to CNMI. CBO estimates that together those provisions would result in no net effect on direct spending in any fiscal year over the 2009–2018 period.

Enacting H.R. 3079 would increase collections of immigration fees by DHS beginning in fiscal year 2009. Because DHS could spend such collections without further appropriation, the provision would have no significant net impact on direct spending.

The Department of State also would collect certain fees for immigrant and nonimmigrant visas, but we estimate that such collections would be offset by higher spending on consular programs and also would have a negligible net effect on direct spending.

Estimated impact on state, local, and tribal governments: H.R. 3079 contains several intergovernmental mandates as defined in UMRA. The act would amend the covenant between the United States and the CNMI to apply federal immigration laws to the commonwealth. Current law preserves CNMI's authority to administer its own immigration policies, so the preemption would be a mandate as defined in UMRA. The act also would require CNMI to enforce a cap on the number of alien workers until the preemption

goes into effect, provide certain information to DHS, and operate its refugee program in compliance with an expired agreement with the Department of the Interior. CBO estimates that the preemption of local immigration laws would impose no costs on the CNMI government; the other requirements would not result in a significant increase in the workload of the commonwealth's immigration staff. The total cost of complying with the mandates in the act would be below the threshold established in UMRA ($68 million in 2008, adjusted annually for inflation).

The act would authorize CNMI to be represented in the U.S. Congress by CNMI's Resident Representative. If CNMI chooses to select a delegate, it would have to hold biennial elections in even-numbered years. (All CNMI elections now take place in odd-numbered years.) Based on information provided by CNMI officials, CBO estimates that the cost of each election would be about $25,000. CNMI would save substantially more than that, however, because it would no longer pay for a Resident Representative in Washington, D.C., once a delegate is elected and in place. The expenses of the delegate's office would be paid by the federal government.

Estimated impact on the private sector: H.R. 3079 would impose private-sector mandates on employers in CNMI by restricting the number of permits allocated for temporary alien workers and charging an annual fee for those permits. It also would impose a private-sector mandate on some aliens lawfully residing or working in CNMI by requiring them to leave the islands before the end of the term for which they were authorized to stay or work. Under the act, no alien lawfully admitted into CNMI would be allowed to stay for more than two years after commencement of the transition period, even if they were authorized to remain for a longer period of time. Finally, the act could impose additional private-sector mandates as a result of regulations that would be established by the Secretary to implement the new immigration system.

The cost to comply with those mandates would depend in part on regulations to be developed by the Secretary under the act and how those regulations affect the labor supply in CNMI. Therefore, CBO cannot determine whether the aggregate cost of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($ 136 million in 2008, adjusted annually for inflation).

Previous CBO estimate: On December 3, 2007, CBO transmitted a cost estimate for H.R. 3079 as ordered reported by the House Committee on Natural Resources on November 7, 2007. Both pieces of legislation would reform the immigration laws of CNMI and provide a nonvoting delegate from CNMI to the House of Representatives. However, they have different provisions regarding payments by the United States to CNMI. The cost estimates reflect those differences.

The private-sector mandates in the two bills are nearly identical, except that the House-reported version does not contain the mandate that would require employers in CNMI to pay an annual fee for permits. The aggregate cost of the mandates in both bills would depend on future regulations.

Estimate prepared by: Federal Spending: DHS—Mark Grabowicz, CNMI Representative—Matthew Pickford, State De-

partment—Sunita D'Monte; Impact on State, Local, and Tribal Governments: Elizabeth Cove and Melissa Merrell; Impact on the private sector: MarDestinee C. Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 3079. The bill would establish several new CNMI-only programs that are intended to mitigate the impact of the extension of U.S. immigration laws to the CNMI, and provide for a Delegate to the U.S. House of Representatives. These new programs include a transitional guest worker program, the granting of U.S. nonimmigrant status for certain alien investors who currently reside in the CNMI, and a visa-waiver program to facilitate travel to the CNMI by tourists and other visitors. There will necessarily be new regulations, paperwork, and the gathering of personal data to establish and operate these new programs. In some cases, such as the guest worker program, the effort is transitional and the program will be phased-out at the end of the transition period established in the bill. In other cases, such as the visa waiver program, the provisions are expected to be permanent, but operations are to be largely integrated into the operation of the national program of the same intent in order to increase efficiency and reduce unnecessary duplication of effort.

## EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the July 19th hearing on S. 1634, the Senate companion measure to H.R. 3079, follows:

### PREPARED STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY, INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, thank you for the opportunity to testify on S. 1634, the Northern Mariana Islands Covenant Implementation Act. I come before you today wearing at least two hats: As Deputy Assistant Secretary of the Interior for Insular Affairs, I am the Federal official that is responsible for generally administering, on behalf of the Secretary of the Interior, the Federal Government's relationship with the Commonwealth of the Northern Mariana Islands (CNMI). I also serve as the President's Special Representative for consultations with the CNMI on any matter of mutual concern, pursuant to Section 902 of the U.S. CNMI Covenant. In fact, I was in Saipan in March for Section 902 consultations with CNMI Governor Fitial and his team. I was also in Saipan in June with Secretary Kempthorne as part of his visit to U.S.-affiliated Pacific Island communities.

Under the Covenant through which the CNMI joined the U.S. in 1976, the CNMI was exempted from most provi-

sions of U.S. immigration laws and allowed to control its own immigration. However, section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (P.L. 94–241) explicitly provides that Congress has the authority to make immigration and naturalization laws applicable to the CNMI. Through the bill that we are discussing today, Congress is proposing to take this legislative step to bring the immigration system of the CNMI under Federal administration. We believe that any federalization of the CNMI's immigration system must be flexible because of the CNMI's unique history, culture, status, demographic situation, location, and, perhaps most importantly, fragile economic and fiscal condition. Additionally, we would need appropriate time to address a range of implementation issues as there are a number of Federal agencies that would be involved with federalization. In testimony before this Committee earlier this year, I offered, on behalf of the Administration, five principles that we believe should guide the development of any federalization legislation.

In previous testimony before this Committee and others, I have described at length the impressive amount of progress that the CNMI has made to improve working conditions there since the 1990s. As I have said repeatedly, the CNMI should be congratulated for this progress. We do not believe that the CNMI gets the credit that it deserves for the progress that it has made. However, serious problems continue to plague the CNMI's administration of its immigration system, and we remain concerned that the CNMI's rapidly deteriorating fiscal situation may make it even more difficult for the CNMI government to devote the resources necessary to effectively administer its immigration system and to properly investigate and prosecute labor abuse. I will begin my statement with an overview of concerns that make a compelling case for federalization.

## NEED FOR AN EFFECTIVE SCREENING PROCESS

The CNMI is hampered by the lack of an effective prescreening process for aliens wishing to enter the Commonwealth. Under the Immigration and Nationality Act (INA), before traveling to the continental United States, aliens must obtain a visa from a U.S. consular officer abroad unless they are eligible under the Visa Waiver Program or other legal authority for admission without a visa. Carriers are subject to substantial fines if they board passengers bound for these parts of the United States who lack visas or other proper documentation. All visa applicants are checked against the Department of State's name-checking system, the Consular Lookout and Support System (CLASS). With limited exceptions, all applicants are interviewed and subjected to fingerprint checks. After obtaining a visa, an alien seeking entry to these parts of the United States must then apply for admission to an immigration officer at a U.S. port of entry. The immigration of-

ficer is responsible for determining whether the alien is admissible, and in order to do so, the officer is supposed to consult appropriate databases to identify individuals who, among other things, have criminal records or may be a danger to the security of the United States. The CNMI does not issue visas, conduct interviews or check finger prints for those wishing to travel to the CNMI, nor does the CNMI have an equivalent to CLASS. Furthermore, CNMI immigration inspectors determine admissibility under CNMI law rather than federal law. The CNMI does have its own sophisticated computerized system for keeping track of aliens who enter and leave the Commonwealth. A record of all persons entering the CNMI is made with the Commonwealth's Labor & Immigration Identification and Documentation System, which is state-of-the-art. However, that is not a substitute for comprehensive prescreening by Federal government authorities. In a post-9/11 environment, and given the CNMI's location and the number of aliens that travel there, we believe that continued local control of the CNMI's immigration system presents significant national security and homeland security concerns.

HUMAN TRAFFICKING

While we congratulate the CNMI for its recent successful prosecution of a case in which foreign women were pressured into prostitution, human trafficking remains far more prevalent in the CNMI than it is in the rest of the U.S. During the twelve-month period ending on April 30, 2007, 36 female victims of human trafficking were admitted to or otherwise served by Guma' Esperansa, a women's shelter operated by a Catholic nonprofit organization. All of these victims were in the sex trade. Secretary Kempthorne personally visited the shelter and met with a number of women from the Philippines who were underage when they were trafficked into the CNMI for the sex industry. As you can imagine, he found their stories heartbreaking. The State Department estimates that a total of between 14,500 and 17,500 victims are trafficked into the U.S. each year from many places in the world. This estimate includes not only women in the sex trade, but men, women and children trafficked for all purposes, including labor. Assuming a CNMI population of roughly 70,000 and a U.S. population of roughly 300 million, the numbers above suggest that human trafficking is between 8.8 and 10.6 times more prevalent in the CNMI than it is in the U.S. as a whole. This is a conservative calculation that most likely makes the CNMI look better than it actually is: The number of victims counted for the CNMI includes only actual female victims in the sex trade who were served by Guma' Esperansa. This is being compared with a U.S. estimate of human trafficking victims of both genders that is not limited to the sex trade. In an apples-to-apples comparison, the CNMI's report card would be worse. We note that most of the victims that have been

served by Guma' Esperansa were referred by the CNMI government (as a result of referrals from the Federal Ombudsman to local authorities). However, it is clear that local control over CNMI immigration has resulted in a human trafficking problem that is proportionally much greater than the problem in the rest of the U.S.

A number of foreign nationals have come to the Federal Ombudsman's office complaining that they were promised a job in the CNMI after paying a recruiter thousands of dollars to come there, only to find, upon arrival in the CNMI, that there was no job. Secretary Kempthorne met personally with a young lady from China who was the victim of such a scam and who was pressured to become a prostitute; she was able to report her situation and obtain help in the Federal Ombudsman's office. We believe that steps need to be taken to protect women from such terrible predicaments.

We are also concerned about recent attempts to smuggle foreign nationals, in particular Chinese nationals, from the CNMI into Guam by boat. A woman was recently sentenced to five years in prison for attempting to smuggle over 30 Chinese nationals from the CNMI into Guam. With the planned military buildup in Guam, the potential for smuggling aliens from the CNMI into Guam by boat is a cause for concern.

REFUGEE PROTECTION

We have very serious concerns about the CNMI government's administration of its refugee protection system, which was established pursuant to a Memorandum of Agreement signed by former Governor Juan Babauta and me in 2003 with the financial support of the Office of Insular Affairs. Establishing a refugee protection system in the CNMI was important to the U.S. because of our concerns regarding U.S. compliance with international treaties to which the U.S. is a party, including the 1967 United Nations Protocol Relating to the Status of Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Even though the CNMI for the most part is not included in the Immigration and Nationality Act, the U.S. is obligated to ensure that aliens in the CNMI are not returned to their home countries if there is a sufficient risk under the Convention Against Torture or the Refugee Protocol that they will be tortured or persecuted there.

Under the Memorandum of Agreement, the CNMI has established its own refugee protection system with the assistance of U.S. Citizenship and Immigration Services (USCIS) acting as "Protection Consultant." In this role, USCIS assisted the Commonwealth in drafting regulations and forms, trained all staff for the program, provided quality assurance review prior to a decision on all cases, and performed background checks on all applicants. The two-year performance period during which the duties of the Protection Consultant were enumerated in the Memo-

randum of Agreement terminated in September 2006. USCIS and the CNMI have yet to enter into a subsequent instrument to delineate the assistance that USCIS has offered to provide to the CNMI, because of lack of response by the CNMI to USCIS's requests for cooperation.

Most recently, the Chief of the Asylum Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, inquired about a group of cases which were of concern to the U.S. Government due to evidence of efforts by a foreign government to improperly interfere in those cases.

Astonishingly, the CNMI Attorney General refused requested information and accused the Department of Homeland Security and the Department of State of attempting to "unbalance the scales of justice" by inquiring about these cases and by expressing concerns about evidence of foreign attempts at interference.

The CNMI Attorney General's failure to distinguish between possible foreign attempts to improperly influence a refugee protection proceeding within the U.S. and attempts by the relevant U.S. agencies to monitor and protect the integrity of a refugee protection program which impacts U.S. compliance with its international obligations raises serious doubts about the CNMI's capacity to adequately carry out the refugee protection program. It is particularly troubling that such a posture is being taken by the CNMI Attorney General, the official who ultimately supervises the refugee protection hearing officers and to whom refugee protection decisions are appealed. With this uncooperative stance from the CNMI, there is no way for the Federal Government to address its very serious concerns and confirm that the U.S. remains in compliance with important international treaty obligations. The concerns that we have about the CNMI Attorney General's letter are very serious and would not be mitigated if the CNMI were to issue decisions in the pending cases that the U.S. Department of Homeland Security found to be appropriate given the facts and applicable law.

The circumstances described above present the Federal Government with a dilemma: If the Federal Government cannot verify that the CNMI is administering its refugee protection program in a manner that accords with U.S. compliance with international treaty obligations, then extending the protections available under U.S. immigration law to cover aliens in the CNMI may be the only way to ensure that compliance. However, making aliens in the CNMI eligible to apply for protection in the U.S. is a potentially serious problem if the CNMI maintains control over its immigration system and continues to determine which aliens, and how many, are able to enter the CNMI. Under that scenario, the U.S. could be required to provide refugee protection to aliens who have been admitted to the CNMI through a process controlled not by the Federal Government, but by the CNMI. The U.S. would be subjecting itself to potential costs and other consequences for

decisions made by the CNMI. This is a strong argument in favor of Congress taking legislative action, as contemplated under Section 503 of the Covenant (P.L. 94–241), to take control of the CNMI's immigration system.

RECOMMENDED CHANGES TO THIS BILL

The above are some of the factors that have led us to conclude that the CNMI's immigration system must be federalized as soon as possible. We believe that S. 1634 is generally sound legislation that embodies the concept of "Flexible Federalization"—that is, federalization of the CNMI's immigration system in a manner designed to minimize damage to the CNMI's fragile economy and maximize the potential for economic growth. We also believe that S. 1634 reflects the principles previously spelled out by the Administration as those that should guide the federalization of the CNMI's immigration system. Therefore, the Administration supports the Northern Marianas Covenant Implementation Act, subject to the following:

• *Long-term Status to Temporary Workers.*—At this time, the Administration is evaluating the specific provisions granting long-term status to temporary workers in the CNMI in light of the Administration's immigration policies. We look forward to working with Congress on this important issue.

• *Protection from Persecution and Torture.*—Consistent with the general transfer of immigration to Federal control on the transition period effective date, the bill should clarify that U.S. protection law, including withholding of removal on the basis of persecution or torture, would apply and be administered by Federal authorities beginning on the transition period effective date. However, given the uncertainties inherent in changing the CNMI immigration regimen, we recommend that extension of the affirmative asylum process under section 208 of the INA to the CNMI be delayed until the end of the transition period. We would also recommend a provision requiring the CNMI to maintain an effective protection program between date of enactment and the transition period effective date.

• *Authority of the Secretary of Homeland Security.*—In general, it is important that the Secretary of Homeland Security have sufficient authority and resources to effectively administer the new responsibilities that would be undertaken under the bill. Improvements to the bill in this regard would include ensuring that the Secretary has full authority in his discretion to designate countries for the new CNMI visa waiver program (giving due consideration to all current CNMI tourist source countries); and providing the necessary fiscal and operational authority to conduct all necessary activities in the CNMI.

• *Visa Waiver.*—As noted above, it is essential that the Secretary of Homeland Security, in consultation with the Secretary of State, have full authority to make visa waiver decisions in the national interest We would also recommend consideration of authorizing integration of the

proposed CNMI visa waiver with the Guam visa waiver program as a possible means of increasing the value of these programs to those jurisdictions, such as, for example, allowing visitors qualifying for both programs a combined 30 days, with a maximum stay of 21 days in either territory.

• *Employment-Based Visas.*—The bill would authorize the Secretary of Homeland Security to establish a specific number of employment-based visas that will not count against the numerical limitations under the Permanent Alien Labor Certification (PERM) program, if the Secretary of Labor, after consultation with the Governor of the Commonwealth and the Secretary of Homeland Security, finds exceptional circumstances with respect to the inability of employers to obtain sufficient work-authorized labor. We would recommend that this provision be removed from the bill as unnecessary because the CNMI will have an uncapped temporary worker program in the 10-year transition period.

• *Conforming and Technical Amendments.*—We would like to work with Congress on a number of other conforming, technical and other amendments necessary to fully effectuate the transfer of responsibilities and effectively administer and integrate the CNMI-specific programs with the INA. For example, the CNMI should be added to the definitions of "State" and "United States" in section 101 of the INA.

## CONCLUSION

We point out, however, that one of this Administration's principles for considering immigration legislation for the CNMI is that such legislation should be carefully analyzed for its likely impact in the CNMI before we implement it. We have also urged that such analysis occur expeditiously: the need to study must not be used as an excuse to delay. We understand that the Senate has requested an analysis of the provisions of S. 1634. We applaud the Senate for taking this step, and urge Congress to carefully consider the results of this analysis in the continued development of this legislation.

It is important to remember that S. 1634 deals with a unique situation, and hence does not establish any precedents that are relevant to the discussion of national immigration reform. S. 1634 is designed to bring under the ambit of Federal immigration law a territory that generally was not previously subject to Federal immigration law. Accomplishing this transition without causing severe economic disruption requires special transitional provisions that take into account the reality that CNMI society has been shaped by immigration policies that vary significantly from Federal immigration policy. Because CNMI society has evolved in a unique manner under unique circumstances, it would not be prudent to apply immigration policy designed for the 50 states to the CNMI in a blanket fashion with no transition mechanisms. The special transi-

tional provisions contained in this bill are designed to move CNMI society from one set of governing principles to another in a manner that minimizes harm to CNMI residents.

Finally, Mr. Chairman, we again point out that the people of the CNMI must participate fully in decisions that will affect their future. As I have said in the past, a better future for the people of the CNMI cannot be imposed unilaterally from Washington, DC, ignoring the insights, wisdom and aspirations of those to whom this future belongs. Although the Administration supports S. 1634, subject to the suggestions outlined above, we are concerned about the message that would be sent if Congress were to pass this legislation while the CNMI remains the only U.S. territory or commonwealth without a delegate in Congress. At a time when young men and women from the CNMI are sacrificing their lives in Iraq in proportions that far exceed the national average, we hope that Congress will consider granting them a seat at the table at which their fate will be decided.

Thank you.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 3079, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## JOINT RESOLUTION OF MARCH 24, 1976

(Public Law 94–241)

Joint Resolution To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

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### "ARTICLE V

### "APPLICABILITY OF LAWS

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"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

[**"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;**]

"[(b)] (*a*) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"[(c)] (*b*) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

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[SECTION 506. (a) Notwithstanding the provisions of Subsection 503(a), upon the effective date of this Section the Northern Mariana Islands will be deemed to be a part of the United States under the Immigration and Nationality Act, as amended for the following purposes only, and the said Act will apply to the Northern Mariana Islands to the extent indicated in each of the following Subsections of this Section.

[(b) With respect to children born abroad to United States citizen or non-citizen national parents permanently residing in the Northern Mariana Islands the provisions of Sections 301 and 308 of the said Act will apply.

[(c) With respect to aliens who are 'immediate' relatives" (as defined in Subsection 201(b) of the said Act) of United States citizens who are permanently residing in the Northern Mariana Islands all the provisions of the said Act will apply, commencing when a claim is made to entitlement to 'immediate relative' status. A person who is certified by the Government of the Northern Mariana Islands both to have been a lawful permanent resident of the Northern Mariana Islands and to have had the 'immediate relative' relationship denoted herein on the effective date of this Section will be presumed to have been admitted to the United States for lawful permanent residence as of that date without the requirement of any of the usual procedures set forth in the said Act. For the purpose of the requirements of judicial naturalization, the Northern Mariana Islands will be deemed to constitute a State as defined in Subsection 101(a) paragraph (36) of the said Act. The Courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands will be included among the courts specified in Subsection 310(a) of the said Act and will have jurisdiction to naturalize persons who become eligible under this Section and who reside within their respective jurisdictions.

[(d) With respect to persons who will become citizens or nationals of the United States under Article III of this Covenant or under this Section the loss of nationality provisions of the said Act will apply.]

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"ARTICLE VII

"UNITED STATES FINANCIAL ASSISTANCE

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"SECTION 703(a) * * *

"(b) There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as that Government may by law prescribe, the proceeds of all customs duties and federal income taxes derived from

the Northern Mariana Islands, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions, or consumed in the Northern Mariana Islands, the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands, and all [quarantine, passport, immigration and naturalization] quarantine and passport fees collected in the Northern Mariana Islands, except that nothing in this Section shall be construed to apply to any tax imposed by Chapters 2 or 21 of Title 26, United States Code.

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***SEC. 3. IMMIGRATION AND TRANSITION.***

*(a) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.*

*(1) IN GENERAL.—Subject to paragraphs (2) and (3), effective on the first day of the first full month commencing 1 year after the date of enactment of the Northern Mariana Islands Immigration, Security, and Labor Act (hereafter referred to as the "transition program effective date"), the provisions of the "immigration laws" (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1l01(a)(17))) shall apply to the Commonwealth of the Northern Mariana Islands (referred to in this section as the "Commonwealth"), except as otherwise provided in this section.*

*(2) TRANSITION PERIOD.—There shall be a transition period beginning on the transition program effective date and ending December 31, 2013, except as provided in subsections (b) and (d), during which the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of the Interior, shall establish, administer, and enforce a transition program to regulate immigration to the Commonwealth, as provided in this section (hereafter referred to as the "transition program").*

*(3) DELAY OF COMMENCEMENT OF TRANSITION PERIOD.—*

*(A) IN GENERAL.—The Secretary of Homeland Security, in the Secretary's sole discretion, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the Commonwealth, may request that the transition program effective date be delayed for a period not to exceed more than 180 days after such date.*

*(B) CONGRESSIONAL NOTIFICATION.—The Secretary of Homeland Security shall notify the Congress of a request under subparagraph (A) not later than 30 days prior to the transition program effective date.*

*(C) CONGRESSIONAL REVIEW.—A delay of the transition program effective date shall not take effect until 30 days after the date on which the request under subparagraph (A) is made.*

*(4) REQUIREMENT FOR REGULATIONS.—The transition program shall be implemented pursuant to regulations to be promulgated, as appropriate, by the head of each agency or depart-*

*ment of the United States having responsibilities under the transition program.*

*(5) INTERAGENCY AGREEMENTS.—The Secretary of Homeland Security, the Secretary of State, the Secretary of Labor, and the Secretary of the Interior shall negotiate and implement agreements among their agencies to identify and assign their respective duties so as to ensure timely and proper implementation of the provisions of this section. The agreements should address, at a minimum, procedures to ensure that Commonwealth employers have access to adequate labor, and that tourists, students, retirees, and other visitors have access to the Commonwealth without unnecessary delay or impediment. The agreements may also allocate funding between the respective agencies tasked with various responsibilities under this section.*

*(6) CERTAIN EDUCATION FUNDING.—Except as otherwise provided, fees collected pursuant to section 703(b) shall be paid into the Treasury of the Commonwealth government for the purpose of funding ongoing vocational educational curricula and program development by Commonwealth educational entities. Fees paid into the Treasury of the Commonwealth under this paragraph shall not exceed fees collected by the Commonwealth government under local law and deposited into the Nonresident Worker Fee Fund for the year preceding the date of enactment of the Northern Mariana Islands Immigration, Security, and Labor Act and shall only be paid under this subsection for the duration of the transition program period.*

*(7) ASYLUM.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) shall not apply during the transition period to persons physically present in the Commonwealth or arriving in the Commonwealth (whether or not at a designated port of arrival), including persons brought to the Commonwealth after having been interdicted in international or United States waters.*

*(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS.—An alien, if otherwise qualified, may seek admission to Guam or to the Commonwealth on or after the transition program effective date as a nonimmigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)). This subsection does not apply to any employment to be performed outside of Guam or the Commonwealth.*

*(c) NONIMMIGRANT INVESTOR VISAS.—*

*(1) IN GENERAL.—Notwithstanding the treaty requirements in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), during the transition period, the Secretary of Homeland Security may, upon the application of an alien, classify an alien as a CNMI-only nonimmigrant under section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) if the alien—*

*(A) has been admitted to the Commonwealth in long-term investor status under the immigration laws of the Commonwealth before the transition program effective date;*

*(B) has continuously maintained residence in the Commonwealth under long-term investor status;*

*(C) is otherwise admissible; and*

*(D) maintains the investment or investments that formed the basis for such long-term investor status.*

*(2) REQUIREMENT FOR REGULATIONS.—Not later than 180 days after the transition program effective date, the Secretary of Homeland Security shall publish regulations in the Federal Register to implement this subsection.*

*(3) INTERIM PROCEDURES.—The Secretary of Homeland Security shall treat an alien who meets the requirements of paragraph (1) as a nonimmigrant under section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) until the regulations implementing this subsection are published.*

*(d) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT; COMMONWEALTH ONLY TRANSITIONAL WORKERS.—An alien who is seeking to enter the Commonwealth as a nonimmigrant worker may be admitted to perform work during the transition period subject to the following requirements:*

*(1) Such an alien shall be treated as a nonimmigrant described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including the ability to apply, if otherwise eligible, for a change of nonimmigrant classification under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefor, under this section and section 245 of such Act (8 U.S.C. 1255).*

*(2) The Secretary of Homeland Security shall establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers for each such nonimmigrant worker described in this subsection who would not otherwise be eligible for admission under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.). In adopting and enforcing this system, the Secretary shall also consider, not later than 30 days after receipt by the Secretary, any comments and advice submitted by the Governor of the Commonwealth. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, during a period not to extend beyond December 31, 2013, unless extended pursuant to paragraph 5 of this subsection, and shall take into account the number of petitions granted under subsection (i). In no event shall a permit be valid beyond the expiration of the transition period. This system may be based on any reasonable method and criteria determined by the Secretary of Homeland Security to promote the maximum use of, and to prevent adverse effects on, wages and working conditions of workers authorized to be employed in the United States, including lawfully admissible freely associated state citizen labor. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under this paragraph have been met.*

*(3) The Secretary of Homeland Security shall set the conditions for admission of such an alien under the transition program, and the Secretary of State shall authorize the issuance of nonimmigrant visas for such an alien to engage in employment only as authorized in this subsection. Such a visa shall not be valid for admission to the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act (8*

*U.S.C. 1101(a)(38)), except admission to the Commonwealth. An alien admitted to the Commonwealth on the basis of such a visa shall be permitted to engage in employment only as authorized pursuant to the transition program.*

*(4) Such an alien shall be permitted to transfer between employers in the Commonwealth during the period of such alien's authorized stay therein, without advance permission of the employee's current or prior employer, within the alien's occupational category or another occupational category the Secretary of Homeland Security has found requires alien workers to supplement the resident workforce.*

*(5)(A) Not later than 180 days prior to the expiration of the transition period, or any extension thereof, the Secretary of Labor, in consultation with the Secretary of Homeland Security, the Secretary of the Interior, and the Governor of the Commonwealth, shall ascertain the current and anticipated labor needs of the Commonwealth and determine whether an extension, in up to a 5-year increment, of the provisions of this subsection are necessary to ensure an adequate number of workers will be available for legitimate businesses in the Commonwealth. For the purpose of this subparagraph, a business shall not be considered legitimate if it engages directly or indirectly in prostitution, trafficking in minors, or any other activity that is illegal under Federal or local law. The determinations of whether a business is legitimate and to what extent, if any, it may require alien workers to supplement the resident workforce, shall be made by the Secretary of Homeland Security, in the Secretary's sole discretion, and shall not be reviewable.*

*(B) If the Secretary of Labor determines that such an extension is necessary to ensure an adequate number of workers for legitimate businesses in the Commonwealth, the Secretary of Labor may, through notice published in the Federal Register, provide for 1 or more extension periods of up to 5 years for each such extension period.*

*(C) In making the determination of whether alien workers are necessary to ensure an adequate number of workers for legitimate businesses in the Commonwealth, and if so, the number of such workers that are necessary, the Secretary of Labor may consider, among other relevant factors—*

*(i) government, industry, or independent workforce studies reporting on the need, or lack thereof, for alien workers in the Commonwealth's businesses;*

*(ii) the unemployment rate of United States citizen workers residing in the Commonwealth;*

*(iii) the unemployment rate of aliens in the Commonwealth who have been lawfully admitted for permanent residence;*

*(iv) the number of unemployed alien workers in the Commonwealth;*

*(v) any good faith efforts to locate, educate, train, or otherwise prepare United States citizen residents, lawful permanent residents, and unemployed alien workers already within the Commonwealth, to assume those jobs;*

*(vi) any available evidence tending to show that United States citizen residents, lawful permanent residents, and unemployed alien workers already in the Commonwealth are not willing to accept jobs of the type offered;*

*(vii) the extent to which admittance of alien workers will affect the compensation, benefits, and living standards of existing workers within those industries and other industries authorized to employ alien workers; and*

*(viii) the prior use, if any, of alien workers to fill those industry jobs, and whether the industry is overly and unnecessarily reliant on alien workers.*

*(6) The Secretary of Homeland Security may authorize the admission of a spouse or minor child accompanying or following to join a worker admitted pursuant to this subsection.*

*(e) PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH IMMIGRATION LAW.—*

*(1) PROHIBITION ON REMOVAL.—*

*(A) IN GENERAL.—Subject to subparagraph (B), no alien who is lawfully present in the Commonwealth pursuant to the immigration laws of the Commonwealth on the transition program effective date shall be removed from the United States on the grounds that such alien's presence in the Commonwealth is in violation of section 212(a)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(A)), until the earlier of the date—*

*(i) of the completion of the period of the alien's admission under the immigration laws of the Commonwealth; or*

*(ii) that is 2 years after the transition program effective date.*

*(B) LIMITATIONS.—Nothing in this subsection shall be construed to prevent or limit the removal under subparagraph 212(a)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(A)) of such an alien at any time, if the alien entered the Commonwealth after the date of enactment of the Northern Mariana Islands Immigration, Security, and Labor Act, and the Secretary of Homeland Security has determined that the alien entered the Commonwealth in violation of this section.*

*(2) EMPLOYMENT AUTHORIZATION.—An alien who is lawfully present and authorized to be employed in the Commonwealth pursuant to the immigration laws of the Commonwealth on the transition program effective date shall be considered authorized by the Secretary of Homeland Security to be employed in the Commonwealth until the earlier of the date—*

*(A) of expiration of the alien's employment authorization under the immigration laws of the Commonwealth; or*

*(B) that is 2 years after the transition program effective date.*

*(3) REGISTRATION.—The Secretary of Homeland Security may require any alien present in the Commonwealth on or after the transition period effective date to register with the Secretary in such a manner, and according to such schedule, as he may in*

*his unreviewable discretion require. Paragraphs (1) and (2) of this subsection shall not apply to any alien who fails to comply with such registration requirement. Notwithstanding any other law, the Government of the Commonwealth shall provide to the Secretary all Commonwealth immigration records or other information that the Secretary deems necessary to assist the implementation of this paragraph or other provisions of the Northern Mariana Islands Immigration, Security, and Labor Act. Nothing in this paragraph shall modify or limit section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or other provision of the Immigration and Nationality Act relating to the registration of aliens.*

*(4) REMOVABLE ALIENS.—Except as specifically provided in paragraph (1)(A) of this subsection, nothing in this subsection shall prohibit or limit the removal of any alien who is removable under the Immigration and Nationality Act.*

*(5) PRIOR ORDERS OF REMOVAL.—The Secretary of Homeland Security may execute any administratively final order of exclusion, deportation or removal issued under authority of the immigration laws of the United States before, on, or after the transition period effective date, or under authority of the immigration laws of the Commonwealth before the transition period effective date, upon any subject of such order found in the Commonwealth on or after the transition period effective date, regardless whether the alien has previously been removed from the United States or the Commonwealth pursuant to such order.*

*(f) EFFECT ON OTHER LAWS.—The provisions of this section and of the immigration laws, as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)), shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.*

*(g) ACCRUAL OF TIME FOR PURPOSES OF SECTION 212(A)(9)(B) OF THE IMMIGRATION AND NATIONALITY ACT.—No time that an alien is present in the Commonwealth in violation of the immigration laws of the Commonwealth shall be counted for purposes of inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)).*

*(h) REPORT ON NONRESIDENT GUESTWORKER POPULATION.—The Secretary of the Interior, in consultation with the Secretary of Homeland Security, and the Governor of the Commonwealth, shall report to the Congress not later than 2 years after the date of the enactment of the Northern Mariana Islands Immigration, Security, and Labor Act. The report shall include—*

*(1) the number of aliens residing in the Commonwealth;*

*(2) a description of the legal status (under Federal law) of such aliens;*

*(3) in five year increments, the number of years each alien has been residing in the Commonwealth;*

*(4) the current and future requirements for the Commonwealth economy of an alien workforce; and*

*(5) recommendations to the Congress related to granting alien workers lawfully present in the Commonwealth on the date of*

*the enactment of such Act United States citizenship or some other permanent legal status.*

*(i) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to count the issuance of any visa to an alien, or the grant of any admission of an alien, under this section toward any numerical limitation contained in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).*

## IMMIGRATION AND NATIONALITY ACT

* * * * * * *

# TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(D)(i) * * *

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam *or the Commonwealth of the Northern Mariana Islands* and solely in pursuit of his calling as a crewman and to depart from Guam *or the Commonwealth of the Northern Mariana Islands* with the vessel on which he arrived;

* * * * * * *

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, [and the Virgin Islands of the United States] *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands*.

* * * * * * *

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, [and the Virgin Islands of the United States] *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands*.

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# TITLE II—IMMIGRATION

## Chapter l—Selection System

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ASYLUM

SEC. 208. (a) * * *

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(e) *COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—The provisions of this section and section 209(b) of this Act shall apply to persons physically present in the Commonwealth of the Northern Mariana Islands or arriving in the Commonwealth (whether or not at a designated port of arrival and including persons who are brought to the Commonwealth after having been interdicted in international or United States waters) only on or after January 1, 2018.*

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## Chapter 2—Qualifications for Admission of Aliens; Travel Control of Citizens and Aliens

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

* * * * * * *

(7) DOCUMENTATION REQUIREMENTS.—

(A) * * *

(B) NONIMMIGRANTS.—

(i) * * *

**[**(iii) GUAM VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (1).**]**

(iii) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER.—*For provision authorizing waiver of clause (i) in the case of visitors to Guam or the Commonwealth of the Northern Mariana Islands, see subsection (l).*—

* * * * * * *

(d)(l) * * *

* * * * * * *

(7) The provisions of subsection (a) (other than paragraph (7)) shall be applicable to any alien who shall leave Guam, *the Commonwealth of the Northern Mariana Islands,* Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. Any alien described in this paragraph, who is denied admission to the United States, shall be immediately removed in the manner provided by section 241(c) of this Act.

* * * * * * *

**[**(l)(1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the

Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State and the Secretary of the Interior, after consultation with the Governor of Guam, jointly determine that—

[(A) an adequate arrival and departure control system has been developed on Guam, and

[(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

[(2) An alien may not be provided a waiver under this subsection unless the alien has waived any right—

[(A) to review or appeal under this Act an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam, or

[(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

[(3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the Government of Guam such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.]

*(l) GUAM AND NORTHERN MARIANA ISLANDS VISA WAIVER PROGRAM.—*

*(1) IN GENERAL.—The requirement of subsection (a)(7)(B)(i) may be waived by the Secretary of Homeland Security, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay in Guam or the Commonwealth of the Northern Mariana Islands for a period not to exceed 45 days, if the Secretary of the Interior, after consultation with the Secretary of Homeland Security, the Secretary of State, the Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands, determines that—*

*(A) an adequate arrival and departure control system has been developed in Guam and the Commonwealth of the Northern Mariana Islands; and*

*(B) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.*

*(2) ALIEN WAIVER OF RIGHTS.—An alien may not be provided a waiver under this subsection unless the alien has waived any right—*

*(A) to review or appeal under this Act an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam or the Commonwealth of the Northern Mariana Islands; or*

*(B) to contest, other than on the basis of an application for withholding of removal under section 241(b)(3) of this Act or under the Convention Against Torture, or an application for asylum, any action for removal of the alien.*

*(3) REGULATIONS.—All necessary regulations to implement this subsection shall be promulgated by the Secretary of Home-*

*land Security, in consultation with the Secretary of the Interior and the Secretary of State, on or before the 180th day after the date of the enactment of the Northern Mariana Islands Immigration, Security, and Labor Act. The promulgation of such regulations shall be considered a foreign affairs function for purposes of section 553(a) of title 5, United States Code. At a minimum, such regulations should include, but not necessarily be limited to—*

*(A) a listing of all countries whose nationals may obtain the waiver also provided by this subsection, except that such regulations shall provide for a listing of any country from which the Commonwealth has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of the enactment of the Northern Mariana Islands Immigration, Security, and Labor Act; and*

*(B) any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems, if different from such requirements otherwise provided by law for nonimmigrant visitors.*

*(4) FACTORS.—In determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of the Interior, in consultation with the Secretary of Homeland Security, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.*

*(5) SUSPENSION.—The Secretary of Homeland Security shall monitor the admission of nonimmigrant visitors to Guam and the Commonwealth of the Northern Mariana Islands under this subsection. If the Secretary determines that such admissions have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the Commonwealth of the Northern Mariana Islands, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum, or that visitors from a country pose a risk to law enforcement or security interests of Guam or the Commonwealth of the Northern Mariana Islands or of the United States (including the interest in the enforcement of the immigration laws of the United States), the Secretary shall suspend the admission of nationals of such country under this subsection. The Secretary of Homeland Security may in the Secretary's discretion suspend the Guam and Northern Mariana Islands visa waiver program at any time, on a country-by-country basis, for other good cause.*

*(6) ADDITION OF COUNTRIES.—The Governor of Guam and the Governor of the Commonwealth of the Northern Mariana Islands may request the Secretary of the Interior to add a particular country to the list of countries whose nationals may obtain the waiver provided by this subsection, and the Secretary may grant such request after consultation with the Secretary of Homeland Security and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country*

*and any special requirements the Secretary of Homeland Security, in the Secretary's sole discretion, may impose prior to allowing nationals of that country to obtain the waiver provided by this subsection.*

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a)(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. No alien admitted to **[**Guam**]** *Guam or the Commonwealth of the Northern Mariana Islands* without a visa pursuant to section 212(l) may be authorized to enter or stay in the United States other than in **[**Guam**]** *Guam or the Commonwealth of the Northern Mariana Islands* or to remain in **[**Guam**]** *Guam or the Commonwealth of the Northern Mariana Islands* for a period exceeding fifteen days from date of admission to **[**Guam**]** *Guam or the Commonwealth of the Northern Mariana Islands*. No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

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## Chapter 4—Inspection, Apprehension, Examination, Exclusion, and Removal

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INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

SEC. 235. (a) * * *

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—

(1) INSPECTION OF ALIENS ARRIVING IN THE UNITED STATES AND CERTAIN OTHER ALIENS WHO HAVE NOT BEEN ADMITTED OR PAROLED.—

(A) * * *

* * * * * * *

*(G) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Nothing in this subsection shall be construed to authorize or require any person described in section 208(e) of this Act to be permitted to apply for asylum under section 208 of this Act at any time before January 1, 2018.*

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## Chapter 5—Adjustment and Change of Status

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

(c) Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(1), *section 212(o)*, section 217; (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S), (6) an alien who is deportable under section 237(a)(4)(B); (7) any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa.

* * * * * * *

CHANGE OF NONIMMIGRANT CLASSIFICATION

SEC. 248. (a) The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 212(a)(9)(B)(i) (or whose inadmissibility under such section is waived under section 212(a)(9)(B)(v), except (subject to subsection (b) in the case of—

(1) * * *

* * * * * * *

(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l), *section 212(o)*, or section 217.

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# TITLE 10, UNITED STATES CODE

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## Subtitle B—Army

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## PART III—TRAINING

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### CHAPTER 403—UNITED STATES MILITARY ACADEMY

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**§ 4342. Cadets: appointment; numbers, territorial distribution**

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Army under subsection (j). Subject to that limitation, cadets are selected as follows:

(1) * * *

* * * * * * *

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the [resident representative] *Delegate in Congress* from the commonwealth.

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# Subtitle C—Navy and Marine Corps

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## PART III—EDUCATION AND TRAINING

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### CHAPTER 603—UNITED STATES NAVAL ACADEMY

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**§ 6954. Midshipmen: number**

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Navy under subsection (h). Subject to that limitation, midshipmen are selected as follows:

(1) * * *

* * * * * * *

(10) One from the Commonwealth of the Northern Mariana Islands, nominated by the [resident representative] *Delegate in Congress* from the commonwealth.

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# Subtitle D—Air Force

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# PART III—TRAINING

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## CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

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### § 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j). Subject to that limitation, Air Force Cadets are selected as follows:

(1) * * *

* * * * * * *

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the [resident representative] *Delegate in Congress* from the commonwealth.

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